

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 14, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TAHVIO GRATTON, an individual,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

NO. 1:22-CV-3149-TOR

ORDER GRANTING DEFENDANT'S  
RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF  
LAW AND GRANTING IN PART  
PLAINTIFF'S BRIEF IN SUPPORT  
OF PROPOSED JUDGMENT

BEFORE THE COURT is Defendant's Renewed Motion for Judgment as a Matter of Law (ECF No. 243), Defendant's Motion for Directed Verdict (ECF No. 230), and Plaintiff's Motion in Support of Proposed Judgment (ECF No. 247). These matters were submitted for consideration without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below, Defendant's Renewed Motion for Judgment as a Matter of Law (ECF No. 243) is GRANTED, Defendant's Motion for Directed Verdict (ECF No. 230) is DENIED as moot, and Plaintiff's Motion in Support of Proposed Judgment (ECF No. 247) is GRANTED in part.

## BACKGROUND

This matter arises from a jury verdict awarding \$39,600,000 in emotional damages for violations of 42 U.S.C. § 1981, the Washington Law Against Discrimination, and violations of public policy, and \$198 million in punitive damages under 42 U.S.C. § 1981a. Defendant first argued that Plaintiff was not entitled to punitive damages in its Motion for Summary Judgment, stating that no evidence had been presented showing senior managers acted with knowing or reckless intent to violate 42 U.S.C. § 1981. ECF No. 53 at 26. In its Order on both parties' motions for summary judgment, the Court reserved for trial the issue of punitive damages, stating, "[m]aterial issues of fact pervade as to what agents had a role in Plaintiff's termination, and the seniority of those persons." ECF No. 94 at 49.

At trial, Plaintiff presented evidence in support of his 42 U.S.C. § 1981, Washington Law Against Discrimination, and violation of public policy claims. As Defendant only requests judgment as a matter of law with respect to punitive damages, the Court focuses solely on the facts as presented in support of the elements of § 1981a.

### **I. Plaintiff's Background with United Parcel Service**

Plaintiff is from Yakima, Washington and began working as a package delivery driver at United Parcel Service ("UPS") at a Seattle center in 2016. ECF

1 No. 225 at 142. He transferred to the Yakima center in January 2018, and  
2 continued his work as a package delivery driver. *Id.* at 137. Plaintiff was a  
3 member of the Teamsters Union and participated as a shop steward for drivers. *Id.*  
4 at 168, 241. After his transfer, Plaintiff developed an acrimonious relationship  
5 with certain center managers, including Erik Loomis, Yakima Center manager, and  
6 Matthew Fromherz, preload manager. ECF No. 229 at 5, 104. It was established  
7 that Eric Loomis was the center manager during the majority of Plaintiff's  
8 employment, but left on medical leave beginning October 21, 2021, and ultimately  
9 retired in January 2022. *Id.* at 76–77. During his time as center manager, his  
10 general job duties included managing approximately 165 to 175 employees and  
11 twelve managers, including Matthew Fromhertz, and would conduct tasks such as  
12 reviewing daily driver performance reports. *Id.* at 6, 44–45. Prior to his  
13 managerial role, Loomis had been a shop steward with UPS for ten years. *Id.* at  
14 77.

15 Matthew Fromherz was a preload supervisor with thirteen years of  
16 experience with UPS. *Id.* at 104–13. He was terminated in 2023 for engaging in a  
17 relationship with another employee, and action which is against UPS policy. *Id.* at  
18 94, 116–17. As specifically related to his employment with UPS, Fromherz  
19 discussed his time at the Yakima center, and his general apathy toward union  
20 workers because he viewed the protections they received in the workplace as

1 leading to less efficiency and greater mistakes. ECF No. 229 at 96. He expressed  
2 a general dislike of Plaintiff as a unionized coworker and found him to be an  
3 ineffective driver who would cut corners or cheat the system because he was  
4 protected by his union and helped others at UPS do the same. *Id.*

5 As presented at trial, Plaintiff viewed the retaliatory behavior as managers in  
6 Yakima taking active steps to make his job more difficult than other drivers,  
7 including other white drivers. One example provided by Plaintiff was the  
8 expansion of the “mall route,” a relatively notorious assignment within the Yakima  
9 center, that Plaintiff alleges was continuously expanded while he was assigned to it  
10 after he made complaints about harassment and retaliation. ECF No. 225 at 160.  
11 Plaintiff was given this route in part because, as he acknowledged in his transfer  
12 form, he had no seniority to bid on routes and thus was left with a less desirable  
13 assignment. *Id.* at 243, 245. Plaintiff also alleges that he was required to take the  
14 unreliable “death truck,” away from the mall route, which he represented normally  
15 consisted of only an area that was two blocks away from the UPS facility, and out  
16 into residential areas. *Id.* at 160. However, he also admitted that the standard  
17 route for the “mall route” contained ancillary areas that could be assigned stops,  
18 which he would have been made aware of when he signed the documentation  
19 describing the route he was signing onto. *Id.* at 245–46. The truck associated with  
20 the mall route was called the “death truck” because it allegedly had a faulty back-

1 up camera, broken fuel gauge, non-functioning heater, and was a manual rather  
2 than an automatic transmission. *Id.* at 175. And while working the mall route,  
3 Plaintiff testified that his requests for assistance with excess packages or stops  
4 were denied by center management specifically for him but were not denied for  
5 other drivers. *Id.* at 185–86.

6 He testified that his initial attempts to transition off the mall route and onto a  
7 different route were thwarted by management, specifically Loomis, but also  
8 admitted that his first opportunity to bid for a new route came in February of 2020  
9 and he chose not to take it. *Id.* at 163, 247. When Plaintiff did take on a new  
10 route, he argues that his stops grew from 150 to 200 over time and was eventually  
11 reassigned the “death truck,” even though the new route to which he was assigned  
12 originally came with a more reliable truck. *Id.* at 166, 177.

13 Additionally, Plaintiff testified that Loomis refused to permit him to wear  
14 specific shoes that aid in his plantar fasciitis, despite holding a doctor’s note. *Id.* at  
15 203. He was similarly denied permission to wear clothing that accommodated his  
16 psoriasis, as well as UPS apparel and accessories that were outfitted by his center  
17 in Seattle. *Id.* at 204. Plaintiff was also called into Loomis’s office for the  
18 presence of tattoos, despite the presence of tattoos on other drivers. *Id.* at 205.

## 19 **II. Plaintiff’s Various Grievances/EEOC Charge and Resolution**

20 Multiple witnesses established that there are several ways to resolve work-

1 related issues for all UPS employees: (1) a party may call the anonymous UPS  
2 Help line or visit the online UPS Help website, (2) a party may report directly to a  
3 human resources representative, or (3) a party may report to a supervisor. ECF  
4 Nos. 220 at 124 and 229 at 215–16. Witnesses from UPS testified that the  
5 company maintains a strict anti-harassment and retaliation policy, which includes a  
6 prohibition against unprofessional or disrespectful conduct, including unwanted  
7 touching. ECF No. 229 at 215. Employees are required to report violations of  
8 UPS’s policies, and may access information about the policies and reporting  
9 information on the employee portal. *Id.* at 220. The ethics hotline number is also  
10 required to be posted in a well trafficked area in all facilities. *Id.* at 219. UPS also  
11 maintains an anti-retaliation policy for employees who do report incidents of  
12 misconduct in the workplace. *Id.* at 224.

13 When an employee calls the UPS Help line (also known as the ethics line), a  
14 group of corporate compliance employees decides which UPS team will take on  
15 the investigation of that report. ECF No. 229 at 217. Relevant for this lawsuit,  
16 when an unwanted physical contact report is made, the compliance team will  
17 automatically dispatch the Security team, because the safety of the reporting  
18 employee may be at issue. *Id.*

19 In addition to the three main ways employees can report workplace disputes,  
20 unionized workers may also report workplace disputes to their union or file a

1 grievance to specifically seek a resolution for a violation of the union contract. *Id.*  
2 at 216. Union grievances are not processed by human resources, and instead are  
3 processed through the Labor Department in conjunction with the union. *Id.*  
4 Supervisors are not unionized, and therefore do not participate in the grievance  
5 process as a claimant to resolve workplace disputes. ECF No. 220 at 186.

6 Two Labor Managers, Lashawn Butler and Karl Leyert testified at trial  
7 regarding their experiences resolving union grievances related to this matter.  
8 Butler has worked for UPS for 34 years and was the Labor Manager for a portion  
9 of Washington encompassing the Yakima facility during 2019–2020. ECF No.  
10 229 at 260. He then passed the area to Leyert in late 2020 or early 2021. Butler  
11 described the general grievance process, whereby the Labor Department would  
12 receive union grievances and investigate the allegations, schedule a center level  
13 hearing with the union business agent, and work to settle the matter. *Id.* at 261.  
14 During the pandemic, the time in which Leyert was handling the Yakima facility,  
15 the center level meetings were held via Zoom.

16 During his tenure, Leyert was in charge of approximately seventeen  
17 buildings encompassing 3,500 hourly employees and 200 supervisors, handling  
18 almost all UPS locations in Washington State. ECF No. 220 at 111. Leyert was  
19 based in Seattle, Washington and oversaw the Yakima facility from 2021 until he  
20 fully retired from UPS in 2023. *Id.* at 168. Part of Leyert’s job was to process

1 grievances filed from unionized employees at his assigned UPS facilities, and  
2 training other supervisors to familiarize them with the policies and procedures  
3 surrounding grievances to ensure that union negotiated terms were followed. *Id.* at  
4 169. Leyert stated that when he received grievances from union employees, his  
5 standard practice was to review the complaint and do some fact-finding, including  
6 interviewing all non-union witnesses, before setting up a center level hearing. *Id.*  
7 at 198.

8 In relation to his workplace disputes, Plaintiff testified that he was aware of  
9 the hotline number but chose to file grievances with his union. ECF No. 225 at  
10 209, 244. With respect to the grievance process, after filing, the union processes  
11 the grievance with the Labor Department and sets up a meeting time to discuss the  
12 issue. Then, the union representative, the employee if invited by the union  
13 representative, any invited witnesses, the labor manager, and anyone else from the  
14 labor side would engage in a “center level hearing.” ECF Nos. 225 at 250, 229 at  
15 261. At a center level hearing, the parties would discuss the matter and attempt to  
16 come to a resolution.

#### 17 **A. EEOC Complaint**

18 Beginning in October 2018 until his termination, Plaintiff estimated that he  
19 had made four reports relating to workplace harassment and discrimination. ECF  
20 No. 225 at 138. Additionally, he filed an Equal Employment Opportunity



1 Commission (“EEOC”) complaint, lodged on October 19, 2018. *Id.* at 141. The  
2 complaint detailed instances where Plaintiff was laid off or denied working hours  
3 in favor of less qualified, non-black drivers, being unfairly reprimanded, and being  
4 called “boy” in a racially derogatory manner after his transfer to the Yakima  
5 facility. *Id.* at 142. He alleged that after he made UPS aware of the retaliatory and  
6 discriminatory conduct, he was further retaliated against by supervisors. *Id.* at  
7 161–62. Plaintiff testified that no one at UPS ever spoke with him about or  
8 conducted an investigation into the specific incidents alleged, and the complained  
9 of manager was ultimately promoted. *Id.* at 144.

#### 10 **B. Old Navy Pick-Up Grievances**

11 Plaintiff also presented evidence of two internal grievances he filed related  
12 to a June 3, 2020, incident in which Erik Loomis required Plaintiff to change his  
13 pick-up piece count from 3,200 pieces to 100 bags from and Old Navy pick up.  
14 ECF No. 225 at 139, 145–46. Loomis stated that it was internal policy to count  
15 bags rather than individual packages from a business center with many packages,  
16 though admitted that Plaintiff was not trained on the practice until after the incident  
17 occurred because Yakima does not host many large shippers. ECF No. 229 at 19.

18 In one grievance, Plaintiff stated that Loomis wanted to change his pick-up  
19 numbers because he did not want to pay him the required bonus for excess  
20 packages. ECF No. 225 at 146. Additionally, Plaintiff alleged that management at

1 the center used the internal communication to threaten his job while he was still on  
2 his delivery route if he did not comply and change the package number from 3,200  
3 pieces to 100 bags. *Id.* One specific message stated, “Per Erik, instructing you to  
4 change the pick-up from Old Navy to a hundred. If you have issue, call Erik.” *Id.*  
5 at 153. Another read, “You are instructed to put in number of bags picked up from  
6 Old Navy, not packages. Failure to follow instructions can lead to *[sic]* discipline  
7 up to and including termination. Do you Understand? Erik.” *Id.*

8 In another grievance, Plaintiff alleged the requirement to change boxes to  
9 bags was discriminatory, as evidenced by his belief that a white driver, Mike  
10 Summerville, reported somewhere between 2,000 and 2,500 pieces from the same  
11 pick-up location and was not required to change his pickup count. *Id.* at 139–40.

12 Loomis clarified that Mike Summerville’s timecard was similarly corrected,  
13 meaning he was also not allowed to count boxes instead of bags. ECF No. 229 at  
14 74. He admitted that Summerville was not threatened with disciplinary action in  
15 the same way but made the caveat that the two incidents were discovered in a  
16 different manner. *Id.* at 20. He noted that Plaintiff was ultimately not disciplined  
17 for the exchange. *Id.* at 76.

18 Lashawn Butler was the Labor Manager in charge of resolving the bags  
19 versus boxes incident. ECF No. 229 at 283. During trial, Butler testified that,  
20 upon receiving and reviewing the grievances, he contacted operational excellence

1 to learn about the method for drivers when they pick up a large quantity of  
2 packages. ECF No. 235 at 6. After conferring with operational excellence, Butler  
3 determined that Loomis was correct in requiring Plaintiff to change his pick-up  
4 from individual pieces to bags. *Id.* He determined that Mike Summerville also did  
5 not receive a bonus for 2,500 packages picked up from Old Navy. *Id.* at 10. He  
6 also determined that the messages Plaintiff described as threatening while on the  
7 Old Navy pick up were standard progressive discipline used by UPS. *Id.* at 17.

8 Butler held a center level hearing and could not remember if Plaintiff had  
9 elected to attend. *Id.* at 14. During the hearing, Butler recounted listening to the  
10 union perspective; that drivers were not required to key in bags rather than boxes,  
11 that Plaintiff was threatened with a write up, belittled, and that another white driver  
12 was not required to change his boxes to bags. *Id.* He then counseled parties on the  
13 proper method for pick-up, explained how to properly key in bags rather than  
14 boxes into the system, and then settled both grievances on August 26, 2020. *Id.* at  
15 15. Butler stated that had he uncovered discrimination while investigating the Old  
16 Navy grievance, he would have involved “HR security.”

17 Plaintiff also discussed a UPS complaint against him filed by one of  
18 Loomis’s employees that worked to support him in a managerial capacity, as  
19 Plaintiff told her to “be quiet” during a conversation with Loomis about the  
20 package count. ECF No. 225 at 155. Plaintiff alleged that her internal complaint

1 was handled differently than any grievance he filed, as he was interviewed, and a  
2 complete investigation was conducted. *Id.* at 156. Ultimately, no disciplinary  
3 action was taken against Plaintiff related to this complaint. *Id.*

#### 4 **C. Grievances Against Erik Loomis and Matthew Fromherz**

5 In January 2021, Plaintiff filed a grievance related to Loomis, alleging  
6 harassment and retaliation because he overloaded the route and that he  
7 intentionally gave him an unreliable truck when the route he was driving was  
8 typically assigned a different truck. ECF No. 225 at 157. He alleged that Loomis  
9 instructed other managers, including Matthew Fromherz, to take actions to make  
10 Plaintiff's job more difficult. *Id.* at 158. On September 9, 2021, Plaintiff filed  
11 another grievance related to route manipulation, arguing that management was  
12 attempting to make him look like a slow driver. ECF No. 225 at 210. He stated  
13 that he was being given less desirable routes in favor of drivers that management  
14 liked, and that requests to make his routes more efficient were met with a threat to  
15 have a supervisor conduct a "ride along." *Id.*

16 Loomis testified that on some days, Plaintiff would meet his expected time,  
17 thereby avoiding a day counted toward a 9.5 violation, and other days he would be  
18 over time, thereby making him a "slow driver" for that particular day, but that he  
19 never changed his route in order to make him appear slower. ECF No. 229 at 85–  
20 86. Loomis stated that he spoke with all drivers who were not meeting their

1 estimated route time, and he never formally disciplined Plaintiff for the time it took  
2 him to complete his routes. Further, Loomis detailed the daily routes created by  
3 Orion, UPS's dispatch program, and his experience modifying parameters of those  
4 routes, at times taking the direction of Plaintiff. He also noted both situations in  
5 which he was unable to make the changes that Plaintiff requested, or when he did  
6 so, and Plaintiff was still unhappy with the route. *Id.* at 65–66. Loomis also  
7 discussed the “mall route,” and the truck assigned to it, detailing that all drivers are  
8 required to drive manual vehicles and that employees are required to fill out a daily  
9 vehicle inspection report that is reviewed and signed by a mechanic as fit for  
10 service. *Id.* at 67–68. Additionally, while Fromherz did not have the ability to  
11 discipline or fire Plaintiff, he could add stops to the route, and agreed that adding  
12 stops or “overloading” a truck out of spite could be a form of retaliation. ECF No.  
13 229 at 120-21

14 In his role as Labor Manager, Leyert processed some of the grievances  
15 Plaintiff filed against Erik Loomis, including a grievance he received on February  
16 3, 2021, detailing that Loomis was harassing and retaliating against Plaintiff by  
17 overloading his route and forcing him to drive a subpar truck. ECF No. 220 at 119.  
18 Leyert stated at trial that he conducted an investigation and determined that, based  
19 on metrics such as stops, pick-ups, and information about the alleged vehicles,  
20 Plaintiff was not being treated differently than other drivers at the center. *Id.* At

1 the center level hearing, Leyert and the union business agent, essentially Plaintiff's  
2 advocate, both agreed that settlement was proper because the claims of retaliation  
3 were unsubstantiated. *Id.* at 205. Importantly, per the union agreement, a manager  
4 in Leyert's role could not speak to the grievant until the center level hearing, and  
5 thus cannot interview them until the process continues to that point. *Id.* at 204. It  
6 is up to the business agent of the union to invite the employee to the center level  
7 hearing. *Id.* at 197. Leyert stated that a center level hearing for this grievance did  
8 occur, but could not remember if Plaintiff attended or what he said if he was  
9 present.

10 He was also in charge of investigating Plaintiff's September 9, 2021,  
11 grievance regarding favoritism and manipulation of his route against Erik Loomis.  
12 ECF No. 220 at 144. Leyert engaged in a similar investigation and found no merit  
13 to the allegation at the center level hearing. *Id.* at 207.

#### 14 **D. Mileage Grievance**

15 In addition to the four main retaliation and discrimination grievances,  
16 Plaintiff also filed a grievance during the holiday season during an unspecified  
17 year regarding back pay for reimbursable mileage that he was owed after assisting  
18 the Kennewick, Washington center during a particularly heavy delivery season. *Id.*  
19 at 169–70. That grievance was ultimately heard at the union national level and set  
20 a precedent for mileage reimbursement moving forward.

1           **E. 9.5 Grievances**

2           Additionally, Plaintiff filed, at times weekly, grievances related to UPS's 9.5  
3 policy. *Id.* at 198. An internal union agreement policy allows for employees to  
4 place themselves on a list that signals to management that they do not want to work  
5 overtime, beyond nine and a half hours, more than twice a week. ECF No. 229 at  
6 262. If an employee has elected to be on this list and is required to work beyond  
7 nine and a half hours on a third day, the employee is entitled to triple wages for the  
8 overtime and the action is considered a 9.5 violation. ECF No. 220 at 200. An  
9 employee that has experienced a 9.5 violation must file a grievance before  
10 receiving the overtime payment. ECF No. 229 at 262. The grievance is then  
11 reviewed by a Labor Manager and approved or denied. *Id.* at 269. An additional  
12 penalty is assessed if a 9.5 grievance is found, and an employee is not paid within  
13 ten days. *Id.* at 279.

14           Both Leyert and Butler testified that most of Plaintiff's grievances were filed  
15 during the pandemic, 2020-2021. ECF Nos. 220 at 201 and 229 at 264. During  
16 the relevant period of time UPS's productivity had increased, perhaps by double,  
17 and Leyert estimated he received over 2,000 9.5 grievances as a result. ECF No.  
18 220 at 201. Plaintiff testified that he was often not provided the overtime pay  
19 owed to him within the requisite timeframe and had to file an additional grievance  
20 in order to be paid. ECF No. 225 at 201. Further, even if Plaintiff prevailed on his

1 wage related grievances, and would therefore be issued a check, he alleged that  
2 Loomis would hold these checks, sometimes for up to six weeks. *Id.* He then had  
3 to file grievances related to those instances as well. Lashawn Butler was the Labor  
4 Manager in charge of some of Plaintiff's 9.5 grievances, including allegations that  
5 Loomis was withholding checks. ECF No. 229 at 278. He stated that upon  
6 receiving the information, he counseled Loomis about providing 9.5 violation  
7 checks in a timely manner and required him to provide a write-up explaining the  
8 situation. *Id.* Ultimately, Plaintiff was paid all overtime wages and related  
9 penalties resulting from the 9.5 grievances. ECF No. 225 at 248.

### 10 **III. Hernandez Incident and Subsequent Investigation**

11 The catalyst of this current lawsuit is a UPS internal complaint lodged  
12 against Plaintiff for allegedly inappropriately touching another employee, Linda  
13 Hernandez. In Plaintiff's recitation of the events of October 19, 2021, he was  
14 walking down a loading dock, tripped over an uneven surface, and reached out to  
15 steady himself against Hernandez's back to keep himself from falling, applying  
16 "thirty percent," of his body weight against her. ECF No. 225 at 218. At the time,  
17 Hernandez was in a "mid squat" position according to Plaintiff and was working  
18 with a package. *Id.* at 216. In Hernandez's versions of events, Plaintiff  
19 approached her from behind while she was bent over sorting through packages on  
20 the floor and grabbed her hip. ECF No. 229 at 168, 170. Both Plaintiff and



1 Hernandez agree that she turned around and said to Plaintiff something akin to,  
2 “You touched me inappropriately.” Plaintiff asserts that he apologized in the  
3 moment.

4 Hernandez stated that she and Jose Castillo, another employee who allegedly  
5 witnessed the event, went to Matthew Fromherz, another preload supervisor, to tell  
6 him what happened. ECF No. 229 at 192. Fromherz then took Hernandez and  
7 Castillo to Loomis’s office, where Loomis instructed Hernandez to write out a  
8 narrative to send to his boss. *Id.* Both Hernandez and Castillo reported the  
9 incident to the ethics number, as recommended by Fromherz and Loomis. *Id.* at  
10 188. Importantly, Linda Hernandez, as a supervisor, is not a union employee, and  
11 therefore is not subject to the grievance process.

12 After contacting the hotline, the investigation was taken over by Ryan  
13 Wiedenmeyer, a Security Supervisor, covering an area known as the “south  
14 division,” encompassing Southwestern Washington. *Id.* at 22–23. As part of his  
15 position as Security Supervisor, Wiedenmeyer launched investigations into  
16 incidents of workplace violence, unwanted physical contact, and issues with  
17 dishonesty. *Id.* at 22. The role of security investigations at UPS is to gather  
18 information, but not to make any final determination. Wiedenmeyer has since  
19 retired, but his office used to be based in Fife Washington. As a result, Yakima  
20 was not a region that he covered during his time with UPS, but he stated he was

1 filling in for the supervisor of the region encompassing Yakima for this specific  
2 investigation. *Id.* at 47–48.

3 Wiedenmeyer testified in his deposition that he received the complaint on  
4 October 22, 2021, from a “Linda” reported through the ethics line. *Id.* at 74. On  
5 October 25, 2021, he reached out to Matthew Fromherz, as a preload supervisor, so  
6 that interviews with relevant parties could be scheduled, witness statements could  
7 be taken, and policy forms could be exchanged. *Id.* at 75. Wiedenmeyer stated  
8 that Fromherz said he did not witness the event, and further was unaware that  
9 Plaintiff had previously made complaints against Fromherz. Wiedenmeyer next  
10 spoke with Linda Hernandez, who, during a telephone call, told him that Plaintiff  
11 grabbed her right hip area while she was bent over on the loading dock and said  
12 something like “Hey girl.” Hernandez told Wiedenmeyer that she felt  
13 uncomfortable, angry, disrespected, intimidated, and harassed, but did not  
14 necessarily feel assaulted. He asked her to provide a second written witness  
15 statement after the interview, and subsequently sent the form to Fromherz for her  
16 to fill out. Fromherz testified that he was never consulted about whether Plaintiff  
17 should be terminated regarding the Hernandez investigation. ECF No. 229 at 132–  
18 33.

19 On October 26, 2021, Wiedenmeyer interviewed Jose Castillo, who  
20 allegedly witnessed the event. ECF No. 222 at 87. Castillo told Wiedenmeyer that

1 he was outside on the belt grabbing packages, and heard Plaintiff say something  
2 like “I have got to go one-on-one with you,” referring to Hernandez. ECF No. 221  
3 at 92. Wiedenmeyer had Castillo fill out a witness statement and requested that  
4 Fromherz sign it and send it back. *Id.* at 94.

5 After speaking with Castillo, on October 26 or 27, Wiedenmeyer then  
6 contacted Karl Leyert, the UPS Labor Manager, to let him know that he would be  
7 reaching out to Lori Olson, the East Division Manager, to set up a meeting with  
8 Plaintiff. *Id.* at 98. During the conversation, Wiedenmeyer and Leyert discussed  
9 that the ten-day window for union member discipline was closing, as the incident  
10 took place on October 19. *Id.* at 101. In between this conversation and a formal  
11 interview with Plaintiff, Leyert and Wiedenmeyer discussed drafting a termination  
12 letter, which Wiedenmeyer stated was a contingency pending the outcome of the  
13 remaining investigation and determination. *Id.* at 116–17.

14 Next, Wiedenmeyer interviewed Brandon Ward on October 27. ECF No.  
15 221 at 108. Ward was referred to Wiedenmeyer through Fromherz as an individual  
16 who may have information related to the incident. *Id.* Ward was also a UPS  
17 supervisor and was conducting a ride along with Plaintiff after the incident. Ward  
18 alleged that Plaintiff stated “nonchalantly” during the ride along that he had put his  
19 hand on Hernandez and that she was upset he had touched her. *Id.* at 111.

20 Also on October 27, 2021, Wiedenmeyer interviewed Plaintiff in the

1 presence of union representative Travis Anderson over Zoom. ECF No. 221 at  
2 122. Wiedenmeyer stated that Plaintiff told him he tripped, was falling, and  
3 reached out to brace himself on Hernandez. *Id.* at 124. According to  
4 Wiedenmeyer, Plaintiff's retelling of events during the course of the interview  
5 changed with respect to hand placement on different parts of Hernandez's body.  
6 *Id.* at 126–27. During the interview, Plaintiff denied making any kind of sexually  
7 motivated contact with Hernandez. *Id.* at 129.

8 Wiedenmeyer did not visit the center in person and additionally conducted  
9 all interviews either on the phone or through Zoom. *Id.* at 50. At the conclusion of  
10 the investigation, Wiedenmeyer made a finding that the claim of unwanted  
11 physical contact was substantiated based on the evidence collected, but statements  
12 heard by Castillo were unsubstantiated. *Id.* at 388. He then turned over all  
13 statements and information collected to the Labor group for determination. *Id.* at  
14 453.

15 The final product of the investigation was then reviewed by Karl Leyert.  
16 Certain actions under UPS policy, like unprovoked assault and dishonesty, are  
17 considered “cardinal sins,” and result in immediate termination rather than less  
18 formal reprimand and a warning letter. ECF No. 220 at 146. In this matter, Leyert  
19 was the sole decisionmaker in Plaintiff's termination, and did not consult with  
20 anyone else in rendering the decision, including local management. *Id.* at 170.

1 And he stated that he did not take into account any of the past grievances, nor the  
2 EEOC complaint, Plaintiff had filed in rendering the decision. *Id.* at 209. He  
3 confirmed that he was in contact with Wiedenmeyer during his investigation, and  
4 at one point asked him to confirm that dates in the draft termination letter were  
5 correct prior to Wiedenmeyer's interview with Plaintiff. *Id.* at 159. However, he  
6 stated that pre-drafting the letter was not a predetermination of the outcome, but  
7 rather a practice he has in his role as Labor Manager, as he had previously drafted  
8 similar discipline letters in other cases as a contingency. *Id.* at 196–97. He stated  
9 that he took the investigation report and five statements he received from  
10 Wiedenmeyer, whom he was working with for the first time, and simply did not  
11 find Plaintiff's account of the event credible. *Id.* at 171, 172. In reviewing all the  
12 accounts of the events, Leyert determined that Plaintiff grabbed Hernandez around  
13 her hip area and did not break his fall on her back as he described. In rendering the  
14 decision, he considered that Brandon Ward stated that Plaintiff touched Hernandez  
15 "to get her attention," rather than to break his fall. *Id.* at 191. Ultimately, Leyert  
16 found the action to be the cardinal sin "unprovoked assault," which resulted in  
17 immediate termination. *Id.* at 150. The termination letter was ultimately written  
18 by Leyert but bore Loomis's signature. *Id.* at 163. Loomis testified that he was  
19 not consulted regarding Plaintiff's termination, never recommended that Plaintiff  
20 be terminated, and was out on medical leave when the final decision was rendered.

1 ECF No. 229 at 76. Leyert explained that it is UPS procedure to have the manager  
2 for the area encompassing the employee sign the termination letter.

3 At the conclusion of the third day of trial, Defendant again requested the  
4 Court exclude the issue of punitive damages through a Federal Rule of Civil  
5 Procedure 50(a) motion for directed verdict. ECF No. 230. Defendant argued that  
6 it was entitled to a dismissal of punitive damages because (1) it offered its own  
7 evidence that the company maintained an anti-harassment policy, (2) Plaintiff  
8 produced no evidence that a manager with decision-making authority acted  
9 contrary to the anti-retaliation policy, and (3) Plaintiff failed to show that Karl  
10 Leyert, in his capacity as Labor Manager for UPS and the sole decision-maker in  
11 terminating Plaintiff, acted with malice or reckless disregard. *Id.* at 5–9. Plaintiff  
12 argued that the evidence demonstrated (1) Karl Leyert overrode company policy in  
13 order to take control of the investigation into Plaintiff, making any opportunity for  
14 a proper investigation into the matter impossible, (2) Leyert displayed a reckless  
15 indifference to the retaliation complaints Plaintiff had previously made, (3) at trial,  
16 Leyert conceded that he had failed to investigate Plaintiff's claims, (4) Leyert  
17 failed to take remedial action against Yakima Center manager Eric Loomis, (5)  
18 Leyert failed to investigate allegations that Plaintiff's route was being manipulated,  
19 (6) Leyert acquiesced to Matthew Fromherz, by allowing him to de facto join the  
20 investigation into the allegations against Plaintiff by gathering witness statements

1 at the Yakima Center, and (7) pre-drafting the termination letter was evidence of a  
2 pre-determined outcome. ECF No. 231 at 7–14. The Court took the Rule 50(a)  
3 motion under advisement. The jury returned a verdict which included punitive  
4 damages amounting to \$198 million. ECF No. 236.

5 Defendant now renews its request for judgment as a matter of law in a Rule  
6 50(b) motion, arguing that Plaintiff never presented evidence that any decision  
7 maker at UPS acted with “malice or reckless indifference.” And that even if  
8 individuals involved had acted with malice or reckless indifference, there are no  
9 decision makers involved with enough authority to impute action onto UPS as a  
10 company, which has made a concerted effort to comply with Title VII. ECF No.  
11 243 at 8–9. And even if UPS was vicariously liable, the amount awarded in  
12 punitive damages is a violation of due process, as the company was never on notice  
13 that it would be subject to the amount of punitive damages as awarded by the jury  
14 as a penalty for violations. *Id.* at 9. Plaintiff argues that any center manager could  
15 be considered as a conduit for UPS for the purposes of punitive damages. ECF No.  
16 252 at 22. But at any rate, he demonstrated that Leyert, as a sufficiently senior  
17 manager, ratified and participated in retaliation which resulted in a violation of 42  
18 U.S.C. § 1981. ECF No. 252 at 20–21.

19 Separately, Plaintiff has requested the Court impose equitable remedies that  
20 are associated with his 42 U.S.C. § 1981 claim, including: enjoining Defendant

1 “from engaging in such unlawful employment practice”; requiring Defendant to  
2 take “such affirmative action as may be appropriate, which may include, but is not  
3 limited to, reinstatement or hiring of employees, with or without backpay”; and/or  
4 any other relief the Court deems appropriate. ECF No. 247 at 3. And requests the  
5 Court impose equitable remedies for violation of the Washington Law Against  
6 Discrimination: “an order to reinstate persons who have been unfairly terminated,  
7 downgraded, or reclassified”; “an order to pay back to a person or persons who  
8 would have had a job but for the unfair practice of the respondent”; “an order  
9 restoring employment benefits, such as insurance benefits, retirement  
10 contributions, sick leave, vacations benefits, seniority standing, lost or not gained  
11 because of an unfair practice”; “an order to not retaliate against a complainant,  
12 witness, or other person for filing a complaint, testifying, or assisting in any  
13 proceeding under RCW 49.60”; “an order to institute affirmative programs,  
14 practices, or procedures that will eliminate an unfair practice or its effects, or will  
15 prevent the recurrence of the unfair practice”; and/or “an order for any other  
16 remedy which is available under comparable civil rights laws of the United States  
17 or other states, including the federal Fair Housing Amendments Act of 1988, 42  
18 U.S.C. § 3601 et seq.” *Id.* at 3–4. Defendant opposes these requests, arguing that  
19 the Court should defer judgment on these issues until all post-trial motions are  
20 heard, and additionally should require an evidentiary hearing before implementing



1 a permanent injunction. ECF No. 256 at 8.

## 2 DISCUSSION

### 3 I. Federal Rule of Civil Procedure 50(b) Standard

4 A motion for judgment as a matter of law under Federal Rule of Civil  
5 Procedure 50(b) is not a freestanding action, but rather it is a renewal of a Rule  
6 50(a) motion brought during trial before the case is submitted to a jury. *E.E.O.C.*  
7 *v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009) (citations omitted).  
8 If a judge denies or defers ruling on a Rule 50(a) motion, and the jury returns a  
9 verdict against the moving party, the party may renew the motion on the same pre-  
10 deliberation grounds. *Id.*

11 When considering a renewed motion for judgment as a matter of law under  
12 Rule 50(b), the court must draw all inferences in the nonmoving party's favor and  
13 is barred from weighing the evidence or making credibility determinations. *Reeves*  
14 *v. Sanderson Plumbing Prods. Inc.*, 530 U.S. 133, 150 (2000). A jury verdict must  
15 be upheld if it is supported by substantial evidence. *Johnson v. Paradise Valley*  
16 *Unified Sch. Dist.*, 251 F.3d 1222, 1227 (9th Cir. 2001). "Substantial evidence is  
17 evidence adequate to support the jury's conclusion, even if it is also possible to  
18 draw a contrary conclusion from the same evidence." *Id.* The court must review  
19 the entire record in the light most favorable to the non-moving party and must  
20 disregard all evidence favorable to the moving party that the jury was not required

1 to believe. *Wallace v. City of San Diego*, 479 F.3d 616, 624 (9th Cir. 2007).  
2 Therefore, the question a court should consider under Rule 50(b) is whether  
3 sufficient evidence was presented at trial, such that it supports the verdict rendered,  
4 and not whether the jury could have arrived at a different conclusion. *Reeves*, 530  
5 U.S. at 150; *see also McLean v. Runyon*, 222 F.3d 1150, 1153 (9th Cir.2000)  
6 (“Judgment as a matter of law may be granted only where, so viewed, the evidence  
7 permits only one reasonable conclusion, and that conclusion is contrary to the  
8 jury's verdict.”).

9 Under Rule 50(b), a court may (1) allow judgment on the verdict; (2) order a  
10 new trial; or (3) direct the entry of judgment as a matter of law. Fed. R. Civ. P.  
11 50(b).

12 If the court grants a renewed motion for judgment as a matter of law, it  
13 must also conditionally rule on any motion for a new trial by  
14 determining whether a new trial should be granted if the judgment is  
later vacated or reversed. The court must state the grounds for  
conditionally granting or denying the motion for a new trial.

15 Fed. R. Civ. P. 50(c).

16 **II. Defendant’s Rule 50(b) Motion for Judgment as a Matter of Law**  
17 **pertaining to the 42 U.S.C. § 1981a punitive damages award.**

18 Defendant seeks judgment as a matter of law pertaining to the punitive  
19 damages the jury awarded under 42 U.S.C. § 1981a. The relevant availability of  
20 punitive damages is set forth in 42 U.S.C. § 1981a(b)(1):

1 A complaining party may recover punitive damages under this section  
2 against a respondent (other than a government, government agency or  
3 political subdivision) if the complaining party demonstrates that the  
4 respondent engaged in a discriminatory practice or discriminatory  
practices with malice or with reckless indifference to the federally  
protected rights of an aggrieved individual.

5 The Supreme Court has outlined the scope of available punitive damages to  
6 areas in which an employer “discriminate[s] in the face of a perceived risk that its  
7 actions will violate federal law.” *Kolstad v. American Dental Association*, 527  
8 U.S. 526, 535 (1999). The terms “malice” or “reckless indifference” refer to the  
9 employer’s knowledge that it may be acting in violation of federal law, not its  
10 awareness that it is engaging in discrimination. *Id.* at 536. However, it is not  
11 enough to show that an employee knew that he or she was engaging in a violation  
12 of federal law. Instead, “an employer may not be vicariously liable for the  
13 discriminatory employment decisions of managerial agents where these decisions  
14 are contrary to the employer's good faith efforts to comply with Title VII.” *Id.* at  
15 528; *see also Passantino v. Johnson & Johnson Consumer Prod., Inc.*, 212 F.3d  
16 493, 516 (9th Cir. 2000) (“Defendants may now establish an affirmative defense to  
17 punitive damages liability when they have a bona fide policy against  
18 discrimination, regardless of whether or not the prohibited activity engaged in by  
19 their managerial employees involved a tangible employment action.”).

20 As an initial matter, the Court finds that the only employee with remotely

1 enough company standing to be contemplated as a proxy for UPS is Karl Leyert.  
2 No other employee who testified or was mentioned at trial, including Erik Loomis  
3 and Matthew Fromherz, had the type of unilateral power such to be considered an  
4 extension of the company, as neither had the power to terminate him. As discussed  
5 at trial, Plaintiff consistently used one of several channels available to him, the  
6 union grievance process, to address his workplace harassment, discrimination, and  
7 retaliation allegations. These grievances would ultimately be processed by either  
8 Lashawn Butler or Karl Leyert, but specifically not through Fromherz or Loomis.  
9 *Swinton v. Potomac Corp.*, 270 F.3d 794, 810 (9th Cir. 2001) (holding that the so  
10 called “good faith” defense is not available when the individual employee charged  
11 with reporting harassing conduct fails to do so). Thus, the question is whether or  
12 not sufficient evidence was presented at trial to suggest that Leyert acted with  
13 malice or reckless indifference to Plaintiff’s federally protected rights upon  
14 terminating him.

15 Plaintiff argues that at trial he demonstrated that Leyert was recklessly  
16 indifferent to his rights beginning when he found no merit to the retaliation and  
17 discrimination grievances filed against Loomis and continuing through his  
18 wrongful termination. ECF No. 252 at 12. His intention to fire Plaintiff was  
19 predetermined, Plaintiff argues, as evidenced by the pre-drafted letter and  
20 communication with Ryan Wiedenmeyer. *Id.* at 16. Plaintiff believes that Leyert

1 held some animus toward him for continuing to file grievances and was perhaps  
2 furthered influenced by Yakima center management. *Id.* at 14. And even if the  
3 Court does not find that Leyert himself had retaliatory intent, Plaintiff argues the  
4 Court may imply that Loomis and Fromherz imputed retaliatory intent onto Leyert  
5 through a cat's paw theory. *Id.* at 22.

6 Defendant argues that Leyert had no malicious or recklessly indifferent  
7 intent in making the decision to terminate Plaintiff. He drafted the termination  
8 letter and consulted with Wiedenmeyer about dates so that the document would be  
9 prepared if necessary, and needed to confirm the dates were correct. ECF No. 243  
10 at 11. Further, Defendant argues that Leyert did not consider Plaintiff's past  
11 grievances when rendering the decision, and Wiedenmeyer did not even know that  
12 Plaintiff had filed past grievances. *Id.*

13 During trial, Leyert testified that in the instant event, he followed standard  
14 procedure when making the decision to terminate Plaintiff. ECF No. 220 at 120–  
15 21. He received witness statements and the investigation report, reviewed the  
16 information, and made a decision. *Id.* at 172, 176. Wiedenmeyer in turn had never  
17 met any of the individuals involved before, and furthermore was not even routinely  
18 involved in the geographic area that encompasses Yakima. ECF No. 222 at 214.  
19 Leyert did not speak with any of the witnesses or center level managers, including  
20 Plaintiff, because his role in this matter was that of final adjudicator. ECF No. 229

1 at 76 (Erik Loomis testifying he was not consulted regarding whether Plaintiff  
2 should be terminated), 229 at 132 (Matthew Fromherz discussing that he was not  
3 consulted as to whether Plaintiff should be terminated). Leyert stated that he did  
4 not consider past grievances, and in fact, was not even the Labor Manager in  
5 charge of Plaintiff's investigations related to the bags versus boxes incident at Old  
6 Navy, the EEOC complaint, or many of the referenced 9.5 grievances. ECF No.  
7 229 at 208–9. Further, he requested that Wiedenmeyer review the letter to check  
8 the dates, which he stated he had done with other investigators during past  
9 investigations to save time in situations where termination is ultimately warranted.  
10 *Id.* at 159, 196–97. In this particular investigation, because it was not processed as  
11 a grievance, Leyert was relying on Wiedenmeyer, a neutral third-party investigator  
12 who did not normally cover the Yakima Center and had no prior interaction with  
13 any of the center level individuals whatsoever, to gather the information to make a  
14 final determination. *See Poland v. Chertoff*, 494 F.3d 1174, 1183 (9th Cir. 2007)  
15 (“Thus, if an adverse employment action is the consequence of an entirely  
16 independent investigation by an employer, the animus of the retaliating employee  
17 is not imputed to the employer.”). There was nothing suggestive passed between  
18 Leyert and Wiedenmeyer, as was stated above, the pre-drafted termination letter  
19 was a contingency in case it was needed in the ten days required to render a  
20 decision. Leyert considered the facts as presented in the investigation report and

1 simply did not believe Plaintiff's version of events. The Court cannot find that,  
2 based on the evidence presented at trial, Leyert harbored malicious or reckless  
3 indifference to Plaintiff's federally protected rights.

4 Plaintiff argues that even if the Court does not find that Leyert is ultimately  
5 liable for violating his federally protected rights through a personal reckless  
6 indifference or malicious intent, it still may find that a "cat's paw" theory  
7 permeated the investigation. ECF No. 252 at 22. The Ninth Circuit's standard for  
8 a cat's paw theory is:

9 If a subordinate, in response to a plaintiff's protected activity, sets in  
10 motion a proceeding by an independent decisionmaker that leads to an  
11 adverse employment action, the subordinate's bias is imputed to the  
12 employer if the plaintiff can prove that the allegedly independent  
adverse employment decision was not actually independent because the  
biased subordinate influenced or was involved in the decision or  
decisionmaking process.

13 *Poland*, 494 F.3d at 1182.

14 The standard does not require that an employee actually impute animus onto  
15 the decisionmaker, but rather that the employee exert enough influence onto the  
16 decisionmaker as to cause the adverse employment action. *Acosta v. Brain*, 910  
17 F.3d 502, 515 (9th Cir. 2018) (quoting *Zamora v. City of Houston*, 798 F.3d 326,  
18 332 (5th Cir. 2015)).

19 Though cat's paw was not a theory of liability expressly provided to the  
20 jury, Plaintiff argues that he presented a clear theory on which the jury could rely:

1 Matthew Fromherz and Erik Loomis were influencing Leyert's investigation. ECF  
2 No. 252 at 22. Plaintiff argued that Fromherz, whom Plaintiff had reported for  
3 retaliation in the past, inserted himself into the investigation, and ultimately  
4 controlled the outcome, because he directed Hernandez and Castillo to call the  
5 ethics hotline and provided witnesses to Wiedenmeyer. And similarly, Plaintiff  
6 suggested that Erik Loomis used his managerial capacity to direct Hernandez and  
7 Castillo to contact the ethics hotline. The Court understands that Plaintiff is  
8 arguing these actions "set in motion," the proceeding, but no evidence was ever  
9 offered that this action was in retaliation for a protected activity, rather than a  
10 function of the reporting process as set forth by UPS, as Hernandez in the moment  
11 turned around and said, "you touched me inappropriately." *Poland*, 494 F.3d at  
12 1182.

13 Further, Loomis began medical leave on October 21, 2021, three days into  
14 the investigation and before Wiedenmeyer began reaching out to witnesses.  
15 Fromherz, however, did work with Wiedenmeyer to provide witnesses and witness  
16 statements from individuals at the Yakima Center for the investigation. Plaintiff's  
17 counsel argued that Fromherz harbored ill will toward Plaintiff, evidenced by the  
18 grievances Plaintiff filed against him that were ultimately unsubstantiated, and thus  
19 sought to influence the outcome of the investigation by "working hand in glove"  
20 with the investigator. *Id.* Taking the information given at trial in the light most



1 favorable to Plaintiff, no testimony or evidence presented suggested that Fromherz  
2 interfered with any witnesses, including Plaintiff and any witnesses he wanted to  
3 present, giving testimony to Wiedenmeyer. In fact, Lori Olson, Eastern Division  
4 Manager, and not Fromherz, handled the coordination of Plaintiff's interview with  
5 Wiedenmeyer, where he was invited to provide additional witnesses. ECF No. 222  
6 at 99–100. The witness statement Fromherz provided to Wiedenmeyer was a  
7 benign recitation of exactly what happened. *See Id.* at 61 (“Question: And when  
8 you talked to [Matthew Fromherz] it was clear that he actually never witnessed the  
9 incident in question; is that correct? Answer: He was not a firsthand witness, if I  
10 remember correctly.”); *see also* ECF No. 220 at 188 (from Matthew Fromherz  
11 witness statement, “When Linda approached me, she told me that she was just  
12 sexually harassed by Tavhio. It was very obvious she was frustrated with what  
13 happened. I asked what happened. She told me she was . . . bent over. He came up  
14 behind her and grabbed her side and that Jose Castillo had witnessed the entire  
15 time . . . I told Linda that I need to talk to Jose before he leaves. I will have you  
16 both write out a statement . . . and we will go talk to Erik.”).

17 Even still, a “manager’s retaliatory motive may be imputed to the company  
18 if the manager was involved [in the adverse decision],” *Bergene v. Salt River*  
19 *Project Agricultural Improvement & Power District*, 272 F.3d 1136, 1141 (9th Cir.  
20 2001). Taking the information in the light most favorable to the Plaintiff, even if

1 Fromherz had retaliatory intent toward Plaintiff, was not involved in the ultimate  
2 decision to terminate him. Further, Hernandez stated that she and Castillo reported  
3 the incident to Fromherz because he was a supervisor, and that Loomis and  
4 Fromherz suggested, but did not require, that they call the ethics hotline. No action  
5 undertaken by Fromherz would indicate that he intended to commandeer the  
6 investigation, and Loomis was not present for most of the investigation. Plaintiff  
7 was able to tell his side of the story, was accompanied by union representation  
8 during the interview, and was able to provide witnesses if he so chose. ECF No.  
9 222 at 96. Given the evidence presented at trial, the Court does not find the jury's  
10 decision related to punitive damages reasonable, and therefore grants Defendant's  
11 Motion for Judgment as a Matter of Law, vacating the jury's award of \$198  
12 million. There is no evidentiary basis for such an award.

13 As part of this grant, the Court is required to conditionally rule on a grant of  
14 new trial should this finding be overturned on appeal. Fed. R. Civ. P. 50(c).  
15 Should this finding be disrupted on appeal, no new trial is appropriate. There is  
16 simply no basis for punitive damages on the evidence presented.

### 17 **III. Plaintiff's Request for Equitable Remedies**

18 Plaintiff argues that he is entitled to select legal and equitable remedies  
19 stemming from the favorable jury verdict he received. ECF No. 247. Related to  
20 the jury verdict with regard to 42 U.S.C. § 1981, Plaintiff requests that the Court

1 (1) enjoin Defendant from engaging in unlawful employment practices; (2) order  
2 Defendant to reinstate Plaintiff with backpay; and (3) any other remedy the Court  
3 deems appropriate. ECF No. 247 at 3. Related to the jury's verdict finding a  
4 violation of the Washington Law Against Discrimination, Plaintiff requests that the  
5 Court (1) order Defendant to reinstate him; (2) require Defendant to issue backpay;  
6 (3) require Defendant to restore Plaintiff's benefits such as insurance, retirement  
7 benefits, sick leave, vacation, and seniority status; (4) require that Defendant  
8 refrain from retaliating against anyone who appeared at trial; (5) require Defendant  
9 to implement programs, practices, or procedures that will eliminate an unfair  
10 practice or its effects, which includes retraining all supervisors and managers; and  
11 (6) require any other remedy which is available under comparable civil rights laws.  
12 *Id.* at 4.

13 To obtain permanent injunctive relief, a plaintiff must have prevailed on the  
14 merits, and must also show that: (1) they suffered an irreparable harm; (2)  
15 remedies available at law, including money damages, are inadequate to  
16 compensate that injury which will be ongoing; (3) the balance of hardships  
17 between the parties warrants an injunction; and (4) an injunction is consistent with  
18 the public interest. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 141  
19 (2010).

20 Beginning with backpay and reinstatement with benefits, Title VII of the

1 Civil Rights Act of 1964 provides that “the court may enjoin the respondent from  
2 engaging in such unlawful employment practice, and order such affirmative action  
3 as may be appropriate, which may include, but is not limited to, reinstatement or  
4 hiring of employees, with or without back pay . . . or any other equitable relief the  
5 court may deem necessary,” making such determination an equitable remedy that a  
6 court may award unilaterally. 42 U.S.C. § 2000e-5; *see also Traxler v. Multnomah*  
7 *Cnty.*, 596 F.3d 1007, 1012 (9th Cir. 2010) (“Deciding what amount would  
8 compensate for the inability to get a job back is not a form of linear fact-finding  
9 appropriately left to the jury. Just as reinstatement invokes equitable factors, so  
10 does front pay as a proxy.”).

11 The Washington Law Against Discrimination (“WLAD”) states that a  
12 plaintiff who is, “injured by any act in violation of this chapter shall have a civil  
13 action in a court of competent jurisdiction to enjoin further violations, or to recover  
14 the actual damages sustained by the person, or both, together with the cost of suit  
15 including reasonable attorneys' fees or any other appropriate remedy authorized by  
16 this chapter or the United States Civil Rights Act of 1964 as amended, or the  
17 Federal Fair Housing Amendments Act of 1988.” Wash. Rev. Code § 49.60.030.  
18 The Washington State Supreme Court has distinguished the types of remedies  
19 available between the WLAD and Title VII, stating that:

20 Although RCW 49.60.030(2) also contemplates equitable remedies,  
such as power to enjoin future violations and to provide for any of the

1 Title VII remedies, the provision very explicitly allows for recovery of  
2 “actual damages” which may be awarded as either a sole remedy or in  
3 conjunction with an equitable remedy such as an injunction. And, as  
previously determined, “actual damages” include full compensatory  
damages.

4 *Martini v. Boeing Co.*, 137 Wash. 2d 357, 374 (1999) (internal citations omitted).

5 At issue in *Martini* was whether the jury had been properly instructed as to  
6 the issue of back pay and front pay. 137 Wash. 2d at 361 (“The trial court rejected  
7 jury instructions proposed by Boeing which would have prevented Martini from  
8 recovering back pay (lost wages calculated from the date the employee stopped  
9 work until the date of the verdict) or front pay (calculated from the date of the  
10 verdict for a reasonably certain period of time that does not exceed the likely  
11 duration of employment) as damages for discrimination.”).

12 Damages in this context are shown by measuring the difference between  
13 actual earnings for the period and those which would have been earned absent  
14 discrimination by the defendant. *Gotthardt v. Nat'l R.R. Passenger Corp.*, 191  
15 F.3d 1148, 1158 (9th Cir. 1999) (quoting *Horn v. Duke Homes*, 755 F.2d 599, 606  
16 (7th Cir.1985)). However, a plaintiff bears the burden of proving damage suffered  
17 and may be denied when he or she “failed to present testimony regarding the extent  
18 of [his or] her damages, whether compensatory or equitable.” *Id.* (internal citation  
19 omitted). While it is undisputed that Plaintiff was terminated from UPS after the  
20 October 19, 2021, incident, he presented no evidence of wage-related damages at

1 trial and presented no information regarding his financial status until his Reply to  
2 his Brief in Support of Proposed Judgment. ECF No. 261. Such late filings  
3 deprive Defendant the opportunity to respond to the accuracy of the data therein  
4 and have been rejected by the Ninth Circuit. *See Tovar v. U.S. Postal Serv.*, 3 F.3d  
5 1271, 1273 n. 3 (9th Cir. 1993) (“[Defendant] moved to strike [plaintiff’s] reply  
6 brief, arguing that the new information was outside the record and that including it  
7 in a reply brief deprived the [defendant] of an opportunity to respond. To the  
8 extent that the brief presents new information, it is improper.”). Therefore, the  
9 Court will not impose front or back pay for which Plaintiff did not seek at trial.

10 Similarly, the Court will not require that Plaintiff be reinstated.  
11 Reinstatement is improper where the “employer-employee relationship has been so  
12 damaged by animosity that reinstatement is impracticable.” *Traxler*, 596 F.3d at  
13 1012. Given each party’s position regarding the reason for Plaintiff’s termination,  
14 and Plaintiff’s current successful barbecue sauce business (ECF No. 225 at 120),  
15 the Court does not find that reinstatement is a remedy equitable to either party.  
16 Further, under Washington law, a court may issue a permanent injunction if a  
17 plaintiff can show a “well-grounded fear” of the invasion of violated rights.  
18 *Washington Fed’n of State Emps., Council 28, AFL-CIO v. State*, 99 Wash. 2d 878,  
19 891 (1983). Because the Court is not ordering reinstatement of Plaintiff, it declines  
20 to exercise its discretion to implement retraining of managers and supervisors as

1 Plaintiff is not in danger of *his* rights being invaded by UPS again.

2       Regarding item one under Plaintiff’s 42 U.S.C. § 1981 equitable remedies,  
3 “Defendant United Parcel Service, Inc. is hereby enjoined from further violations  
4 of [42 U.S.C. section 1981 and 2000e-5(g)],” this request is redundant because  
5 UPS already has this obligation, and Plaintiff did not bring this lawsuit on behalf of  
6 any other UPS employee. *See E.E.O.C. v. Goodyear Aerospace Corp.*, 813 F.2d  
7 1539, 1544 (9th Cir. 1987) (remanding a district court’s finding on grounds that an  
8 instruction to comply with federal law in an *EEOC class action case* may be  
9 appropriate). More importantly, the requirement is not narrowly tailored as it  
10 would subject Defendant to this Court’s enforcement power on a seemingly  
11 unlimited basis. *See Roman v. MSL Cap., LLC*, 2019 WL 3017765, at \*5 (C.D.  
12 Cal. July 9, 2019), *aff’d*, 820 F. App’x 592 (9th Cir. 2020) (“ ‘Obey the law’  
13 injunctions such as this are disfavored, as they are not narrowly tailored and are at  
14 odds Federal Rule of Civil Procedure 65(d), which requires that orders granting  
15 injunctive relief be ‘specific in terms’ and ‘describe in reasonable detail ... the act  
16 or acts sought to be restrained.’ ”). While the Court agrees with Plaintiff’s  
17 contention that the at issue statutes are liberally construed and left up to the Court’s  
18 discretion to find appropriate remedies, a request that Defendant avoid “future  
19 violations,” is far too broad to be implemented with any consistency or fairness,  
20 and thus is denied.

1 And finally, the Court cannot derive power to implement Plaintiff's item  
2 four under the WLAD remedies, injunctive relief from retaliation against witnesses  
3 who provided testimony or otherwise assisted with the claim, because WAC 162-  
4 08-298 is a provision that applies specifically to administrative law judges.

5 The Defendant has not challenged, at this time, the jury's verdict for  
6 emotional distress. Therefore, the Court will enter Judgment for that amount. The  
7 Court grants post-judgment interest to run from the day the judgment is entered  
8 until payment is made in full, at a rate to be calculated in 28 U.S.C. § 1961.

9 //

10 //

11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 12 1. Defendant's Renewed Motion for Judgment as a Matter of Law (ECF No.  
13 243) is **GRANTED**.
- 14 2. Defendant's Motion for Directed Verdict (ECF No. 230) is **DENIED as**  
15 **moot**.
- 16 3. Plaintiff's Brief in Support of Proposed Judgment (ECF No. 247) is  
17 **GRANTED in part**. Defendant is ordered to pay post-judgment interest  
18 from the day the judgment is entered according to 28 U.S.C. § 1961, at  
19 4.29% per annum.

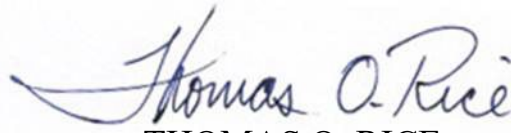


1 4. The Clerk of Court shall enter Judgment for Plaintiff in the amount of  
2 \$39,600,000 against Defendant United Parcel Service, Inc.

3 The District Court Executive is directed to enter this Order and furnish  
4 copies to counsel.

5 DATED November 14, 2024.



  
THOMAS O. RICE  
United States District Judge